IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.136 OF 1993

Shri Manoj D. Agzarwal .. Plaintiff

Versus

1.M/s.J.Chittaranjan & Co.
2.Shri C.D.Shah .. Defendants

ALONG WITH

SUIT NO.189 OF 1993

Shri Dayaram D. Agarwal .. Plaintiff

Versus

M/s.J.Chittaranjan & Co. & Anr. ... Defendants

ALONG WITH

SUIT NO.190 OF 1993

Shri Dhansi Ram Agarwal .. Plaintiff

Versus

M/s.J. Chittaranjan & Co. & Anr .. Defendants

ALONG WITH

SUIT NO.191 OF 1993

Shri Ashok D. Agarwal .. Plaintiff

Versus

1.M/s.J.Chittaranjan & Co. & Anr.. Defendants

ALONG WITH

SUIT NO.192 OF 1993

Smt. Hemalata V. Agarwal .. Plaintiff

Versus

1.M/s.J.Chittaranjan & Co. & Anr.. Defendants

Mr. M.L.Bansal for the plaintiffs in all suits

Mr. Denzil D'Mellow for the defendants in all suits

CORAM : P.V.KAKADE, J.

DATE : 29TH OCTOBER, 2004.

P.C.:

1. All these suits are being disposed of by this common judgement as the issues involved in all the suits are identical, the plaintiffs are members of one family and the defendant in all the suits is the same. The counsel appearing for the parties are also the same in all the proceedings coupled with the fact that the evidence lead by the plaintiffs, though separate, is identical in support of their respective claims.

2. Suit No.136 of 1993 is filed by the plaintiff for recovery of the amount of Rs.8,44,250/= from the

defendants, Suit No.189 of 1993 is for recovery of amount of Rs.9,21,000/= from the defendants, Suit No.190 of 1993 is for recovery of Rs.9,21,000/- from the defendants, Suit No.191 of 1993 is for recovery of Rs.9,21,000/= from the defendants and Suit No.192 of 1993 is also for recovery of amount of Rs.9,21,2000/= from the defendants. In all the suits, except Suit No.189 of 1993 the principal amount is Rs.6,00,000/= and interest thereon is calculated at Rs.3,21,000/= at the rate of 18% p.a. from 1.1.1990 to 21.12.1992. In Suit No.136 of 1993 the principal amount is Rs.5,50,000/= and interest of Rs.2,94,250/= is calculated at the rate of 18% p.a. from 1.1.1990 to 21.12.1992.

3. The plaintiffs have based their claim on Fixed Deposit Receipts dated 1.1.1990, copy of which is annexed to the respective Plaint. The Plaintiffs had deposited with the defendants the said principal amounts for which the defendants have signed and executed the receipt, which is Exh.A annexed to the Plaint and which has been produced in evidence at Exh.P-3. The defendants have admitted and acknowledged the receipt of the said amount from the plaintiffs and they have signed and executed the said receipt. In Suit No.136 of 1993

the defendants also signed and executed written slip assuring the plaintiff to pay the dues on or before 28.2.1991, which is produced in exh.P-4 in that Suit. The defendants did not pay the dues and hence the notice was issued through advocate demanding payment of dues with interest at the rate of 18% p.a. The defendants replied the said notice sent by the plaintiff denying the liability of payment, however, in said reply the defendants did not deny or dispute execution of the fixed deposit receipts which are on record. The defendants asked for inspection of documents, which were offered by the plaintiffs advocate but inspection was not taken. The plaintiffs filed suit for recovery of dues against the defendants on 22.12.1992.

4. The defendants filed their written statement denying the liability to pay, but not denied the execution of the fixed deposit receipt dated 1.1.1990 in all suits. It is the case of the defendants that they have executed the receipt but according to them, it was not consideration and therefore, it is submitted that the defendants are not liable to pay any amount to the plaintiffs in any suit.

5. On the basis of pleadings of both the parties issues were settled in all the suits, which are identical in all the suits. The Issues and my findings thereon are as follows :

ISSUES		FINDINGS
(1)	Whether the defendants prove that Fixed Deposit Receipt, Exh.A to the Plaint is without any consideration as alleged in paragraph No.1(a) of Written statement?	In the affirmative
(2)	Whether the defendants prove that the suit is bad for misjoinder of necessary parties as alleged in paragraph No.1(c) of the written statement?	In the negative
(3)	Whether the defendants prove that the suit is	

	barred under the provisions of Bombay Moneylenders Act as alleged in paragraph No.1(d) of the Written Statement?	In the negative
(4)	Whether the defendants prove that the suit is barred by the law of limitation as alleged in paragraph No.1(f) of the Written statement?	In the negative
(5)	To what relief the plaintiff is entitled?	As per final order below.
(6)	What orders, in general?	As per final order below.

6. At the outset it may be noted that the plaintiffs in all suits filed affidavit of documents as well as affidavit of evidence together with compilation of

original documents, which are sufficient to show that the defendants have executed the fixed deposit receipts for the impugned amounts, which aspect is not at all denied by the defendants. The plaintiffs entered the witness box in support of their case and have proved their document in respect of suits, and therefore, I must record the findings to the effect that the plaintiffs have proved their entire documents on record, which are in support of the entire claim.

. As against this defendants neither entered the witness box nor examined any other witness, nor filed affidavit of evidence in rebuttal, nor they filed any document to challenge the plaintiffs' case. In other words, there is absolutely no evidence on record led by the defendants to rebut the plaintiffs' case and except for cross examination of the plaintiffs in every case, there is no iota of any rebuttal by the defendants in all the suits. It may further be noted that the plaintiffs evidence could not be shaken at all. In the course of cross examination in all the suits the defendants advocate during the course of cross examination called upon the plaintiffs to produce evidence of the plaintiffs to deposit of the amount. In

response to this question the plaintiffs produced counter foil of the cheque books in the evidence, which aspect has fortified the plaintiffs' claim against the defendants. The plaintiffs have also filed their bank passbook showing entries of the amount of the cheques given by the plaintiffs to the defendants and the said pass books are accepted as evidence on record. In addition to this, in Suit No.136 of 1993, the defendants have also signed and executed a written slip assuring the plaintiff of payment, which fact also fortified the claim in that suit.

. The tenor of the cross examination held on behalf of the defendants was to show that there was no consideration at the foot of the suit receipts and therefore, the defendants tried to evade the liability of making the payment. However, the suit claim which is founded upon the fixed deposit receipts, is further fortified by the bank documents and therefore, there is no doubt whatsoever that due consideration did pass at the time of execution of the receipts by the defendants. The learned counsel for the defendants in all the suits submitted that the bank slips and passbooks were suspicious documents, as some of them were not duly

signed by the bank officer. However, it must be noted that the evidence of bank counter foils as well as pass book has come on record at the instance of the defendant's advocate when plaintiffs were asked about it during the cross examination and therefore, it cannot be said that the plaintiffs case is resting on such documents. As noted earlier, the suit claim is founded on suit fixed deposit receipts of which execution is even not denied and therefore, I hold that the plaintiffs in all the suits have proved their claim in toto against the defendants. Hence, all the issues are duly answered as noted earlier.

7. The plaintiffs have claimed the interest at the rate of 18% p.a. However, taking in to account the facts and circumstances I am inclined to grant future interest at the rate of 12% p.a., which should meet the end of justice. In view of this aspect I proceed to pass the following order :

O R D E R

SUIT NO. 136 OF 1993

1. The suit stands decreed with costs.

2. The defendants shall pay Rs.8,44,250/= to the plaintiff along with interest at the rate of 12% p.a. on principal amount of Rs.5,50,000/= from the date of the suit till payment or realisation.

SUIT NO.189 OF 1993

1. The suit stands decreed with costs.

2. The defendants shall pay Rs.9,21,000/= to the plaintiff along with interest at the rate of 12% p.a. on principal amount of Rs.6,00,000/= from the date of the suit till payment or realisation.

SUIT NO.190 OF 1993

1. The suit stands decreed with costs.

2. The defendants shall pay Rs.9,21,000/= to the plaintiff along with interest at the rate of 12% p.a. on principal amount of Rs.6,00,000/= from the date of the suit till payment or realisation.

SUIT NO.191 OF 1993

1. The suit stands decreed with costs.

2. The defendants shall pay Rs.9,21,000/= to the plaintiff along with interest at the rate of 12% p.a. on principal amount of Rs.6,00,000/= from the date of the suit till payment or realisation.

SUIT NO.192 OF 1993

1. The suit stands decreed with costs.

2. The defendants shall pay Rs.9,21,000/= to the plaintiff along with interest at the rate

of 12% p.a. on principal amount of Rs.6,00,000/= from the date of the suit till payment or realisation.

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